BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

CHARLOTTE I. GLIDDEN	)	
Claimant	)	
	)	
VS.	)	
	)	
HEARTLAND HOME HEALTH & HOSPICE	)	
Respondent	)	Docket No. **1,039,470**
	)	
AND	)	
	)	
INDEMNITY INS. CO. OF N. AMERICA	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier request review of the April 28, 2008 preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict.

ISSUES

Charlotte I. Glidden was employed as a home health aide for respondent. Her job required that she travel to client's homes to provide personal care. After leaving her last client of the day she returned to respondent's office, recorded her mileage and then took her 15-minute paid break. While on break she drove a few blocks to a car wash and when her credit card became stuck she exited her vehicle, slipped and fell suffering injuries.

The respondent denied the slip and fall accident at the car wash arose out of and in the course of employment. The Administrative Law Judge (ALJ) determined under the unique facts of this case that Glidden's accident was compensable and that she provided timely notice.

Respondent requests review of whether Glidden's accidental injury arose out of and in the course of employment and whether she provided timely notice.[1]

Claimant argues the ALJ's Order should be affirmed.

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[1] Respondent did not address the issue of timely notice in its brief to the Board.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

Charlotte Glidden worked as a home health aide for respondent and worked from 8 a.m. to 4:30 p.m. with two paid 15-minute breaks and a half hour for lunch. She was not required to clock in or out. Her job duties required her to travel to patient's homes to provide personal care. Glidden uses her own vehicle and respondent reimburses her for mileage to and from her patient's homes. She normally takes her breaks in her vehicle because she typically is traveling from one patient's house to another. She further testified she did not know of any specific restrictions on where and when she could take a 15-minute break. And at the conclusion of the day she occasionally returned to the office to do the required paperwork.

On February 12, 2008, Glidden had finished with her last patient and returned to respondent's office at tenth and Gage in order to record her mileage. Claimant recorded her mileage and noted the time 3:45 to 3:46 in the parking lot. She then decided to take her paid 15-minute break and proceeded to a car wash, a couple of blocks away. Although it was a cold day the automatic car wash bay was open. Glidden put her debit card into the machine and it became stuck. She called the car wash owner and was told that there was a pair of pliers on the northeast side of the building under some bricks that she could use to remove her credit card. Glidden got out of her car while talking on the phone to the owner and then slipped on ice and fell to the ground hitting her head and wrist. At 3:54 p.m., Glidden contacted a co-worker, Glenna Jones, to let her know what had happened. The day after the accident Glidden asked the human resources manager if she needed to fill out an incident report for workers compensation.

Initially, Glidden had planned to go back to the office after her break to do paperwork but after the accident she was taken to the hospital. Claimant was diagnosed with a fractured wrist and surgery was performed by Dr. Michael Schmidt.

An employer is liable to pay compensation to an employee where the employee incurs personal injury by accident arising out of and in the course of employment.[2] Whether an accident arises out of and in the course of the worker's employment depends upon the facts peculiar to the particular case.[3]

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[2] K.S.A. 2007 Supp. 44-501(a).

[3] *Springston v. IML Freight, Inc.*, 10 Kan. App. 2d 501, 704 P.2d 394, *rev. denied* 238 Kan. 878 (1985).

The two phrases arising "out of" and "in the course of" employment, as used in the Kansas Workers Compensation Act, have separate and distinct meanings; they are conjunctive and each condition must exist before compensation is allowable.

> The phrase 'out of' employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises 'out of' employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Thus, an injury arises 'out of' employment if it arises out of the nature, conditions, obligations, and incidents of the employment. The phrase 'in the course of' employment relates to the time, place, and circumstances under which the accident occurred and means the injury happened while the worker was at work in the employer's service.[4]

The parties agree that travel from client to client was a necessary function of Glidden's employment. In other words, travel was an integral part of her employment. And as she traveled she was entitled to two paid 15-minute breaks with no restrictions on when, where or how to take her breaks. And Glidden normally took her breaks in her car.

In *Blair,*[5] the Court held that when a business trip is an integral part of the claimant's employment the "entire undertaking is to be considered from a unitary standpoint rather than divisible." *See also*, *2 Larson's Workers' Compensation Law* § 25.01 which states:

> Employees whose work entails travel away from the employer's premises are held in the majority of jurisdictions to be within the course of their employment continuously during the trip, except when a distinct departure on a personal errand is shown. Thus, injuries arising out of the necessity of sleeping in hotels or eating in restaurants away from home are usually held compensable.

As a general rule, injury during a paid break is considered to arise out of employment because the break is considered to be to the mutual benefit of the worker and employer. And off premises breaks may be compensable:

> If the employer, in all circumstances, including duration, shortness of the off-premises distance, and limitations on off-premises activity during the interval can be deemed to have retained authority over the employee, the off-premises injury may be found to be within the course of employment.[6]

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[4] *Kindel v. Ferco Rental, Inc.*, 258 Kan. 272, 899 P.2d 1058 (1995)

[5] *Blair v. Shaw*, 171 Kan. 524, 233 P.2d 731 (1951).

[6] *1 Larson's Workers' Compensation Law*, § 13.05 at 13-62.

> The fact that the coffee break or rest period is a paid one, or for any other reason might be presumptively within the course of employment, does not of course mean that anything that happens during that span of time is compensable. If the employee uses the interval, not for its basic purpose of rest and refreshment, but for personal errands, such as cashing a check at a bank, or doing some shopping for Christmas, or getting a tuberculin shot checked, the employee leaves the scope of employment if the deviation is such as to be called substantial. On the other hand, a swim during a coffee break has been held not to interrupt the course of employment, in part because the refreshing effects of the swim would benefit the employer as well as the employee by enhancing the employee's efficiency.[7]

Simply stated, the trip to the car wash was not significant enough to be considered substantial or a distinct departure for a personal errand because of the fact that claimant took her breaks in her car. In addition, it is generally held that an activity undertaken in good faith to advance the employer's interests, whether or not the employee's own assigned work is thereby furthered, is within the course of employment.[8] The respondent admitted it wanted its employees to present a positive image to its clients and a clean car would be part of that presentation and benefitted the respondent.

Applying the principles announced in the above-referenced cases and treatise, this Board member concludes that under the unique facts of this case Glidden's slip and fall while on a paid break is compensable.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.[9] Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2007 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.[10]

WHEREFORE, it is the finding of this Board Member that the Order of Administrative Law Judge Bryce D. Benedict dated April 28, 2008, is affirmed.

IT IS SO ORDERED.

Dated this 30th day of June 2008.

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[7] *1 Larson's Workers' Compensation Law*, § 13.05 at 13-66.

[8] *2 Larson's Workers' Compensation Law*, § 27.

[9] K.S.A. 44-534a.

[10] K.S.A. 2007 Supp. 44-555c(k).

HONORABLE DAVID A. SHUFELT
BOARD MEMBER

c: Jan L. Fisher, Attorney for Claimant
M. Joan Klosterman, Attorney for Respondent and its Insurance Carrier
Bryce D. Benedict, Administrative Law Judge